

NEBRASKA STATE BOARD OF HEALTH MEETING

DRAFT MINUTES – January 23, 2012

ATTENDANCE NOTIFICATION. A regular meeting of the State Board of Health was called to order by the Chair, Gary Westerman, DDS, at 11:00 AM on January 23, 2012 in Conference Room LL-F of the State Office Building in Lincoln. Copies of the agenda were mailed to board members, news media, and other interested parties prior to the meeting, and posted on the Health and Human Services website. The following members were present: Daniel Bizzell, EdD; Janet Coleman; Edward Discoe, MD; Ted Evans, DVM; Russell Hopp, DO; Diane Jackson, APRN; Ken Kester, Pharm D, JD; Dale Michels, MD; Luisa Rounds, RN; Paul Salansky, OD; Wayne Stuberg, PhD, PT; John Tennity, DPM; Gary Westerman, DDS; and Daryl Wills, DC. Quorum met.

Members not in attendance: Debra Parsow; Roger Reamer, MBA; Rich Robinson, PE.

Staff attending: Ron Briel, Monica Gissler, David Montgomery, Anne Owens, Kay Pinkley

APPROVAL OF ANNUAL REPORT. The Board of Health annual report for 2011 was discussed. Copies will be sent to Governor Heineman, Lt. Governor Sheehy, members of the HHS Legislative Committee, professional board chairs, local health directors, health care professional associations, key HHS staff, and other interested parties. Dr. Michels made a motion to approve the annual report; Dr. Hopp seconded. Call for vote on motion - voting yes: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Rounds, Salansky, Stuberg, Tennity, Westerman, Wills); voting no: 0; not voting: 0. Motion carried, and report approved.

LEGISLATIVE DISCUSSION. Dr. Hopp, Chair of the Public Health, Education and Legislation Committee, listed bills of interest to his committee, as determined during a committee conference call held on January 20, 2012, and committee discussion held the morning of January 24th. Conference call participants included Dr. Hopp, Dr. Kester, Dr. Evans, Ms. Jackson and staff Monica Gissler.

Dr. Hopp explained the three categories that the Board of Health places legislative bill in: Category 1: Take action on; 2: Monitor and take possible action on, and 3: monitor.

BILL	INTRODUCER	BOARD OF HEALTH PRIORITIES 2012
712	Haar	Change permitted practice provisions under the Certified Nurse Midwifery Practice Act.
831	Howard	Adopt the Genetic Counseling Practice Act
834	Gloor	Change the Nebraska Regulation of Health Professions Act.

Board of Health support means providing testimony or sending a letter stating any concerns. For each of the support and opposition bills listed above, the Board will send a letter and/or testify.

RECESS. The Board of Health recessed at 12:00 PM for lunch. Motion made by Dr. Hopp; seconded by Dr. Wills. All in favor by voice vote.

Dr. Westerman called the meeting back to order at 1:02 PM. The following members were in attendance: Daniel Bizzell, EdD; Janet Coleman; Edward Discoe, MD; Ted Evans, DVM; Russell Hopp, DO; Diane Jackson, APRN; Ken Kester, Pharm D, JD; Dale Michels, MD; Luisa Rounds, RN; Paul Salansky, OD; Wayne Stuber, PhD, PT; John Tennity, DPM; Gary Westerman, DDS; and Daryl Wills, DC. Quorum met.

APPROVAL OF AGENDA. Dr. Westerman asked if there were any changes to the agenda for the meeting today. There being no objections, the agenda was approved by consent calendar.

APPROVAL OF MINUTES. Dr. Westerman asked if there were any changes to the minutes from the November 21, 2011 meeting. Dr. Kester suggested adding a sentence on page 4 regarding our regulations: "Our intention is that the physical therapy regulations will apply to physical therapists, and the chiropractic regulations will apply to chiropractors, with oversight of each by their respective boards." Dr. Stuber suggested an additional change to page 4 regarding mediation. There have been complaints brought against physical therapists, but not disciplinary action. On page 5, line, Chiropractic Commission should be changed to Chiropractic Board. There being no objections, the minutes were approved unanimously by roll call vote.

CHAIRPERSON'S REPORT. Dr. Westerman reported on the following:

1. Has anyone attended any professional board meetings that they would like to report on?

There is a current 2012 Professional Board Meeting Schedule on the handout table. It is important that you let Monica know in advance when you plan to attend a meeting, and if you plan to attend the entire meeting or just a portion. If the meeting includes a working lunch, a lunch will not be ordered for you unless specific arrangements are made. A new list will come out in the next couple of weeks.

Dr. Michels presented at the New Board Members Orientation on December 2nd.

2. Today we hosted state senators for our annual Legislative Luncheon. If you have not already done so, please remember to pay Monica.
3. Rich Robinson had emergency heart surgery last week, so is unable to be with us today. We wish him a speedy recovery.
4. Our next meeting will be on March 26th, in 1-Z of the Nebraska State Office Building. We currently have no non-Lincoln meetings planned for 2012.

CHIEF MEDICAL OFFICER'S REPORT. Dr. Acierno reported.

- DHHS is making data available through a web query system that came online in mid-November. This is the first one of this type to be developed by the Division of Public Health. Data may be queried by state or county. We want to maximize the potential of our data by making it readily available to all, including data from the most recent Behavioral Risk Factor Survey. Over 700 people used the system in the first two months.
- So far we have had only a few confirmed cases of the flu. We're hoping for a mild flu season.
- Oral health campaign "Watch your mouth" sponsored by HRSA for kids in Lincoln, Lexington, Omaha, Scottsbluff and Norfolk with the message to parents that they should take their kids to the dentist at least once a year and the message that oral health affects the entire body. TV spots and newspapers will also be covered by the grant, in addition to partially funding our Dental Director position.
- Dr. Wills asked about the letters that went to Dr. Schaefer regarding scope of practice issues. The letters said to go back to the professional boards to deal with the issues.
- Dr. Westerman asked for a status update on the Oral and Dental Director position.

Dr. Michels made a motion to receive the reports under agenda item #6. All in favor by voice vote.

LEGISLATIVE UPDATE. Bryson Bartels presented on the DHHS legislative priorities and bills they are tracking.

COMMITTEE REPORTS.

Credentialing Review (407) Committee – Ms. Coleman, Committee Chair, presented.

- Update on Potential Technical Reviews: Lactation Consultants, Music Therapists, Acupuncturists, and EMS in homes. Music Therapy is the most likely of these to enter the formal Credentialing Review process first.
- Proposed professional members for the Technical Review Committee on Music Therapy include:
 - Jamie Young, M.A., MT-BC of Concord, representing the Applicant Group, Nebraska Music Therapy Task Force.
 - Jill Champley, Ph.D., SLP of Omaha, Speech Language Pathologist at the Department of Veterans Affairs, Nebraska Western Iowa.
 - Ryan McCreery, Ph.D. of Omaha. He is an Associate Director of Audiology/Research Audiologist at Boys Town National Research Hospital
 - Linda Storz, O.T. of Lincoln, an Inpatient Occupational Therapy Clinical Supervisor
- Proposed consumer members include the following:
 - Bill Snyder of Scottsbluff, Director, Anti-Fraud & Abuse at Ingenix
 - Stephen Peters, B.A., M.A. of Omaha, Marketing Manager, Private Practice Associates,

The Nebraska Medical Center and Adjunct Instructor at Clarkson College and Creighton University

- Corinne Pederson, public member , economic developer
- Debra Parsow of Omaha, representing the Board of Health to serve as Chairperson.
- Ms. Coleman made a motion to approve these nominees. Roll call vote: Voting yes: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Salansky, Stuberg, Tennity, Westerman; Wills); voting no: 0 ; not voting: 0. Motion carries.
- The Committee suggested there be a professional member pool created of 6-8 members, similar to the public pool, composed primarily of persons who have been professional representatives from the Board of Health or other licensing boards. The expectation is that they would be interviewed by the Credentialing Review Committee.
- Dr. Kester made a motion to receive this committee's report, seconded by Dr. Discoe; all in favor by voice vote.

Rules and Regulations Committee – Dr. Kester, Committee Chair, reported.

Regulations for approval by the Board of Health:

- 172 NAC 56, Licensure of Dentists and Dental Hygienists. Most of these regulations were a rewrite of the chapter to reflect the provisions of the Uniform Credentialing Act (UCA). LB 225 regarding lawful presence was also incorporated. A public hearing was held November 17, 2011. Dr. Kester made a Committee motion to approve these nominees. Roll call vote: Voting yes: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Salansky, Stuberg, Tennity, Westerman; Wills); voting no: 0; not voting: 0. Motion carries.
- The next three sets of regulations were discussed collectively, but will require separate approval. Many of the changes were the same as above – to incorporate changes to the UCA and LB 225 regarding lawful presence. The public hearing was held on October 27, 2011 and the Board of Emergency Medical Services reviewed all comments and proposed changes on December 12, 2011.
 - 172 NAC 11, Licensure of Out-of-Hospital Emergency Care Providers. Dr. Kester made a Committee motion to approve these nominees. Roll call vote: Voting yes: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Salansky, Stuberg, Tennity, Westerman; Wills); voting no: 0; not voting: 0. Motion carries.
 - 172 NAC 12, Licensure of Emergency Medical Services. There was general clean up done. At the hearing, there was opposition to the 48 hour reporting system, and the EMS Board recommended not changing this at this time. Dr. Kester made a Committee motion to approve these nominees. Roll call vote: Voting yes: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Salansky, Stuberg, Tennity, Westerman; Wills); voting no: 0; not voting: 0. Motion carries.
 - 172 NAC 13, Licensure of Emergency Medical Training Agencies. Dr. Kester made a Committee motion to approve these nominees. Roll call vote: Voting yes: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Salansky, Stuberg, Tennity, Westerman; Wills); voting no: 0; not voting: 0. Motion carries.

- 172 NAC 168, Licensure of Environmental Health Specialists. These regulations were changed to implement changes created in the UCA, and as a result of the passage of LB 403 in 2009. A public hearing was held on November 17, 2011, and on December 1, 2011 the Board of Registered Environmental Health Specialists met and voted to support the amended regulations as written. Dr. Kester made a Committee motion to approve these regulations. Roll call vote: Voting yes: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Salansky, Stuberger, Tennity, Westerman; Wills); voting no: 0; not voting: 0. Motion carries.

Review the following regulations (no vote required):

- 174 NAC 1 & 8, Abortion Consent Reporting. These were noncontroversial at the public hearing held on December 8, 2011. There was a comment made about combining forms, but it was found to be unworkable.
- 174 NAC 6, Cultural History in Adoptions. These regulations add a requirement that the medical history of the biological parents whose child is being adopted must include, if available, the cultural history of the biological parents.
- 186 NAC 2, Brain Injury Registry. These regulations reflect changes to the Brain Injury Registry Act enacted by LB 928 in 2008. Reporting requirements changed from annually to monthly. DHHS would now be required to provide information to assist persons with brain or head injuries in accessing necessary and appropriate services relating to their injuries when sufficient funding is available.
- 175 NAC 6, Licensure of Children's Day Health Services. This is a new licensure category as a result of LB 849 in 2010. There appear to be two entities in Omaha to qualify for this licensure. A CDHS provides specialized care and treatment to 20 or more persons under 21 years of age for less than 24 consecutive hours. A public hearing was held on December 15, 2011 and the feedback was incorporated as appropriate.

Dr. Hopp made a motion to receive the review of these regulations and this Committee report, second by Ms. Coleman, and all in favor by voice vote.

Professional Boards Committee. Dr. Tennity, Committee Chair, reported. Committee members conducted 3 interviews this morning; one had been cancelled yesterday.

Dr. Westerman asked if the members would like to vote collectively on all proposed appointments. All were in favor to vote on all appointments together.

Board of Funeral Directing and Embalming: Appoint Steve Brunken of Lincoln for the term of January 23, 2012 through November 30, 2016.

Board of Registered Environmental Health Specialists: Appoint Jere Ferrazzo, M.P.A., REHS of Omaha for the term of January 23, 2012 through November 30, 2016.

Dr. Tennity made a committee motion to approve these appointments. Voting yes to approve all proposed appointments: Roll call vote: Voting yes: 14 (Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Salansky, Stuberg, Tennity, Westerman; Wills); voting no: 0 ; not voting: 0. Motion carries.

Public Health, Education and Legislation Committee: Dr. Hopp, Committee Chair, reported that he had no additional items to report. He did appreciate the overview of LB 834 by Margaret Kohl.

Dr. Bizzell made a motion to receive this committee's report, second by Ms. Coleman, and all were in favor by voice vote.

UNFINISHED BUSINESS.

- Dr. Westerman discussed the letter from the Dental Hygienists (June 16th) regarding placing sealants. This was discussed at the last Board of Dentistry meeting, and no action was taken. A letter was sent to Dr. Schaefer requesting that DHHS Legal review the issue and provide clarification as to the legal basis for allowing dental assistants to place sealants. The agency response was received right after our November meeting, and a copy has been provided to Board of Health members.
- Dr. Westerman sent a letter on Dry Needling to Dr. Schaefer last month. A letter was sent to Dr. Schaefer requesting that DHHS Legal review the issue and provide clarification as to the legal basis for allowing physical therapists to do dry needling. The agency response was received right after our November meeting, and a copy has been provided to Board of Health members.
- The Board members discussed this issue at length, whether or not a 407 Credentialing Review should be recommended. Dr. Hopp made a motion to say that the Board of Health thinks that dry needling is currently out of the scope of practice of the physical therapists, however you have the option of applying for a 407 review or to use the following boards to seek mediation. Dr. Kester suggested a motion that be made with the two suggested actions, without including a judgment by the Board of Health. Dr. Wills offered that they should seek an Attorney General Opinion. Dr. Salansky discussed the lack of formal process in place for mediation. We do not have guidelines in place for implementing the statute. Dr. Bizzell called the question to end the discussion: 9 in favor, and 4 opposed. Roll call vote that the Board of Health is rendering our opinion that the current process of dry needling is outside the scope of physical therapists, and if they disagree then they have the option of seeking mediation or applying for a 407 credentialing review, and if seeking mediation that they include the Board of Medicine, Board of Physical Therapy and the Board of Chiropractic: Voting yes: 2 (Hopp, Wills); voting no: 12 (Bizzell, Coleman, Discoe, Evans, Jackson, Kester, Michels, Salansky, Stuberg, Tennity, Westerman); voting no: 0 ; not voting: 0. Motion failed. Dr. Michels suggested that the Executive Committee communicate

electronically to discuss and develop policies and processes for mediations and for encouragement of use of the 407 process by various professional boards. Dr. Wills seconded the motion. Ms. Coleman made a motion to table. There was no second. There was a hand vote for Dr. Michels' suggestion: 12 in favor, 1 opposed, and 1 member out of the room.

NEW BUSINESS. Ms. Gissler referred to the LB 834 hearing when Senator Campbell referred to the Legislature going paperless. Bill Wisell's photocopies for regulations for this meeting cost over \$500. Bill Wisell would like to present to the Board of Health some options to accomplish this, as used by various professional boards. This will occur during the morning of the March 26th meeting. Please send in any comments about this.

PUBLIC COMMENTS. None.

PREPARATION FOR NEXT MEETING. The next regular Board of Health meeting will be March 26, 2012 at the State Office Building in Lincoln.

ADJOURN. There being no further business, the meeting adjourned at 2:52 PM. Minutes taken by Anne Owens and Monica Gissler. This draft has not yet been reviewed by Board members.

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If you would like any attachments mentioned in these minutes, or have other questions, please contact Monica Gissler, 402/471-6515, Fax 402/471-0383, or email at: monica.gissler@nebraska.gov.